

# Home Is Where the Principal Place of Business Is

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The Federal Circuit's ongoing effort to implement *TC Heartland*—the Supreme Court's landmark 2017 patent venue decision—took another step forward in May with *In re BigCommerce, Inc.*, which vacated and remanded two decisions out of the Eastern District of Texas after defendants sought mandamus relief following denial of their motions to dismiss and transfer for improper venue.

At issue were two narrow and related questions:

Does a domestic corporation incorporated in a state having multiple judicial districts “reside” for purposes of the patent-specific venue statute, 28 U.S.C. § 1400(b), in each and every judicial district in that state?

And, if not, in which district does a domestic corporation reside?

The appellate court left no room for doubt when it invoked the statute's “language, history, purpose, and precedent” and held that for purposes of determining venue in a state having multiple judicial districts, a corporate defendant shall be considered to “reside” only in the single judicial district within that state where it maintains a principal place of business. Alternatively, if the corporation does not maintain its principal place of business within the state in which it is incorporated, then venue is proper in the judicial district in which its registered office is located.

The laser-focus of the Federal Circuit's decision belies the impact years of contrary interpretation of the patent venue statute have had on U.S. patent litigation. For example, before *TC Heartland*, the number of patent suits filed in the (very rural) Eastern District of

Texas famously outstripped that of any other venue in the U.S., despite being sparsely populated and far from most major technology hubs. According to Lex Machina, in 2015 approximately 45% of new patent cases were filed in the Eastern District of Texas. In fact, the Eastern District's reputation for being the preferred venue for patent plaintiffs achieved sufficient notoriety to enter popular culture. See e.g., "When Patents Attack!" [\*This American Life\*, July 22, 2011](#).

The Eastern District's run as the go-to venue for patent litigants was largely made possible by an expansive and—per *TC Heartland*—incorrect reading of the patent venue statute, which allowed plaintiffs to claim venue was proper in any district in which defendants were subject to personal jurisdiction. Following *TC Heartland*, which limited venue to districts in which the defendant resides or has committed an infringing act *and* has a regular and established place of business, the share of new patent cases in the Eastern District of Texas has dropped to approximately 13%.

As a practical matter, *In re BigCommerce, Inc.* resolves ambiguity as to which district in a multi-district state is proper for patent litigation. More broadly, the decision is yet another measure of *TC Heartland*'s ground-shifting impact on patent litigation.

A harder question is whether *In re BigCommerce, Inc.* will help spur (pun intended) changes to years of unique local practice in the Eastern District of Texas. On May 29, 2018, Judge Gilstrap followed other recent Federal Circuit precedent to find that the venue statute did not compel transfer. That said, he nonetheless transferred the case based on convenience factors. Although it's too early to say which way the Eastern District of Texas is heading, this recent opinion from one of its most closely watched patent judges tentatively points in a new direction.